

E2SSB 6630 - H AMD 1057

By Representative Roberts

ADOPTED 03/01/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The department of social and health
4 services is providing a structured, therapeutic environment for persons
5 who are eligible for placement in the community protection program in
6 order for them to live safely and successfully in the community while
7 minimizing the risk to public safety.

8 The legislature approves of steps already taken by the department
9 to create a community protection program within the division of
10 developmental disabilities.

11 NEW SECTION. **Sec. 2.** Sections 3 through 9 of this act apply to a
12 person:

13 (1)(a) Who has been charged with or convicted of a crime and meets
14 the following criteria:

15 (i) Has been convicted of one of the following:

16 (A) A crime of sexual violence as defined in chapter 9A.44 or 71.09
17 RCW including, but not limited to, rape, rape of a child, and child
18 molestation;

19 (B) Sexual acts directed toward strangers, individuals with whom a
20 relationship has been established or promoted for the primary purpose
21 of victimization, or persons of casual acquaintance with whom no
22 substantial personal relationship exists; or

23 (C) One or more violent offenses, as defined by RCW 9.94A.030; and

24 (ii) Constitutes a current risk to others as determined by a
25 qualified professional. Charges or crimes that resulted in acquittal
26 must be excluded; or

27 (b) Who has not been charged with and/or convicted of a crime, but
28 meets the following criteria:

- 1 (i) Has a history of stalking, violent, sexually violent,
2 predatory, and/or opportunistic behavior which demonstrates a
3 likelihood to commit a violent, sexually violent, and/or predatory act;
4 and
- 5 (ii) Constitutes a current risk to others as determined by a
6 qualified professional; and
- 7 (2) Who has been determined to have a developmental disability as
8 defined by RCW 71A.10.020(3).

9 NEW SECTION. **Sec. 3.** The definitions in this section apply
10 throughout this chapter unless the context clearly requires otherwise.

11 (1) "Assessment" means the written opinion of a qualified
12 professional stating, at a minimum:

13 (a) Whether a person meets the criteria established in section 2 of
14 this act;

15 (b) What restrictions are necessary.

16 (2) "Certified community protection program intensive supported
17 living services" means access to twenty-four-hour supervision,
18 instruction, and support services as identified in the person's plan of
19 care.

20 (3) "Community protection program" means services specifically
21 designed to support persons who meet the criteria of section 2 of this
22 act.

23 (4) "Constitutes a risk to others" means a determination of a
24 person's risk and/or dangerousness based upon a thorough assessment by
25 a qualified professional.

26 (5) "Department" means the department of social and health
27 services.

28 (6) "Developmental disability" means that condition defined in RCW
29 71A.10.020(3).

30 (7) "Disclosure" means providing copies of professional
31 assessments, incident reports, legal documents, and other information
32 pertaining to community protection issues to ensure the provider has
33 all relevant information. Polygraph and plethysmograph reports are
34 excluded from disclosure.

35 (8) "Division" means the division of developmental disabilities.

36 (9) "Managed successfully" means that a person supported by a

1 community protection program does not engage in the behavior identified
2 in section 2 of this act.

3 (10) "Opportunistic behavior" means an act committed on impulse,
4 which is not premeditated.

5 (11) "Predatory" means acts directed toward strangers, individuals
6 with whom a relationship has been established or promoted for the
7 primary purpose of victimization, or casual acquaintances with whom no
8 substantial personal relationship exists. Predatory behavior may be
9 characterized by planning and/or rehearsing the act, stalking, and/or
10 grooming the victim.

11 (12) "Qualified professional" means a person with at least three
12 years' prior experience working with individuals with developmental
13 disabilities, and: (a) If the person being assessed has demonstrated
14 sexually aggressive or sexually violent behavior, that person must be
15 assessed by a qualified professional who is a certified sex offender
16 treatment provider, or affiliate sex offender treatment provider
17 working under the supervision of a certified sex offender treatment
18 provider; or (b) If the person being assessed has demonstrated violent,
19 dangerous, or aggressive behavior, that person must be assessed by a
20 licensed psychologist or psychiatrist who has received specialized
21 training in the treatment of or has at least three years' prior
22 experience treating violent or aggressive behavior.

23 (13) "Treatment team" means the program participant and the group
24 of people responsible for the development, implementation, and
25 monitoring of the person's individualized supports and services. This
26 group may include, but is not limited to, the case resource manager,
27 therapist, residential provider, employment/day program provider, and
28 the person's legal representative and/or family, provided the person
29 consents to the family member's involvement.

30 (14) "Violent offense" means any felony defined as a violent
31 offense in RCW 9.94A.030.

32 (15) "Waiver" means the community-based funding under section 1915
33 of Title XIX of the federal social security act.

34 NEW SECTION. **Sec. 4.** (1) Prior to receiving services through the
35 community protection program, a person must first receive an assessment
36 of risk and/or dangerousness by a qualified professional. The
37 assessment must be consistent with the guidelines for risk assessments

1 and psychosexual evaluations developed by the department. The person
2 requesting services and the person's legal representative have the
3 right to choose the qualified professional who will perform the
4 assessment from a list of state contracted qualified professionals.
5 The assessment must contain, at a minimum, a determination by the
6 qualified professional whether the person can be managed successfully
7 in the community with reasonably available safeguards and that lesser
8 restrictive residential placement alternatives have been considered and
9 would not be reasonable for the person seeking services. The
10 department may request an additional evaluation by a qualified
11 professional evaluator who is contracted with the state.

12 (2) Any person being considered for placement in the community
13 protection program and his or her legal representative must be informed
14 in writing of the following: (a) Limitations regarding the services
15 that will be available due to the person's community protection issues;
16 (b) disclosure requirements as a condition of receiving services other
17 than case management; (c) the requirement to engage in therapeutic
18 treatment may be a condition of receiving certain services; (d)
19 anticipated restrictions that may be provided including, but not
20 limited to intensive supervision, limited access to television viewing,
21 reading material, videos; (e) the right to accept or decline services;
22 (f) the anticipated consequences of declining services such as the loss
23 of existing services and removal from waiver services; (g) the right to
24 an administrative fair hearing in accordance with department and
25 division policy; (h) the requirement to sign a preplacement agreement
26 as a condition of receiving community protection intensive supported
27 living services; (i) the right to retain current services during the
28 pendency of any challenge to the department's decision; (j) the right
29 to refuse to participate in the program.

30 (3)(a) If the department determines that a person is appropriate
31 for placement in the community protection program, the individual and
32 his or her legal representative shall receive in writing a
33 determination by the department that the person meets the criteria for
34 placement within the community protection program.

35 (b) If the department determines that a person cannot be managed
36 successfully in the community protection program with reasonably
37 available safeguards, the department must notify the person and his or
38 her legal representative in writing.

1 NEW SECTION. **Sec. 5.** (1) Individuals receiving services through
2 the department's community protection waiver retain all appeal rights
3 provided for in RCW 71A.10.050. In addition, such individuals have a
4 right to an administrative hearing pursuant to chapter 34.05 RCW to
5 appeal the following decisions by the department:

6 (a) Termination of community protection waiver eligibility;

7 (b) Assignment of the applicant to the community protection waiver;

8 (c) Denial of a request for less restrictive community residential
9 placement.

10 (2) Final administrative decisions may be appealed pursuant to the
11 provisions of RCW 34.05.510.

12 (3) The secretary shall adopt rules concerning the procedure
13 applicable to requests for hearings under this section and governing
14 the conduct thereof.

15 (4) When the department takes any action described in subsection
16 (1) of this section it shall give notice as provided by RCW 71A.10.060.
17 The notice must include a statement advising the person enrolled on the
18 community protection waiver of the right to an adjudicative proceeding
19 and the time limits for filing an application for an adjudicative
20 proceeding. Notice must also include a statement advising the
21 recipient of the right to file a petition for judicial review of a
22 final administrative decision as provided in chapter 34.05 RCW.

23 (5) Nothing in this section creates an entitlement to placement on
24 the community protection waiver nor does it create a right to an
25 administrative hearing on department decisions denying placement on the
26 community protection waiver.

27 NEW SECTION. **Sec. 6.** (1) Community protection program
28 participants shall have appropriate opportunities to receive services
29 in the least restrictive manner and in the least restrictive
30 environments possible.

31 (2) There must be a review by the treatment team every ninety days
32 to assess each participant's progress, evaluate use of less restrictive
33 measures, and make changes in the participant's program as necessary.
34 The team must review all restrictions and recommend reductions if
35 appropriate. The therapist must write a report annually evaluating the
36 participant's risk of offense and/or risk of behaviors that are
37 dangerous to self or others. The department shall have rules in place

1 describing this process. If a treatment team member has reason to be
2 concerned that circumstances have changed significantly, the team
3 member may request that a complete reassessment be conducted at any
4 time.

5 NEW SECTION. **Sec. 7.** A participant who demonstrates success in
6 complying with reduced restrictions and remains free of offenses that
7 may indicate a relapse for at least twelve months, may be considered
8 for placement in a less restrictive community residential setting.

9 The process to move a participant to a less restrictive residential
10 placement shall include, at a minimum:

11 (1) Written verification of the person's treatment progress,
12 compliance with reduced restrictions, an assessment of low risk of
13 reoffense, and a recommendation as to suitable placement by the
14 treatment team;

15 (2) Development of a gradual phase out plan by the treatment team,
16 projected over a reasonable period of time and includes specific
17 criteria for evaluating reductions in restrictions, especially
18 supervision;

19 (3) The absence of any incidents that may indicate relapse for a
20 minimum of twelve months;

21 (4) A written plan that details what supports and services,
22 including the level of supervision the person will receive from the
23 division upon exiting the community protection program;

24 (5) An assessment consistent with the guidelines for risk
25 assessments and psychosexual evaluations developed by the division,
26 conducted by a qualified professional. At a minimum, the assessment
27 shall include:

28 (a) An evaluation of the participant's risk of reoffense and/or
29 dangerousness; and

30 (b) An opinion as to whether or not the person can be managed
31 successfully in a less restrictive community residential setting;

32 (6) Recommendation by the treatment team that the participant is
33 ready to move to a less restrictive community residential placement.

34 NEW SECTION. **Sec. 8.** (1) The department is authorized to take one
35 or more of the enforcement actions listed in subsection (2) of this

1 section when the department finds that a provider of residential
2 services and support with whom the department entered into an agreement
3 under this chapter has:

4 (a) Failed or refused to comply with the requirements of this
5 chapter or the rules adopted under it;

6 (b) Failed or refused to cooperate with the certification process;

7 (c) Prevented or interfered with a certification, inspection, or
8 investigation by the department;

9 (d) Failed to comply with any applicable requirements regarding
10 vulnerable adults under chapter 74.34 RCW; or

11 (e) Knowingly, or with reason to know, made a false statement of
12 material fact related to certification or contracting with the
13 department, or in any matter under investigation by the department.

14 (2) The department may:

15 (a) Decertify or refuse to renew the certification of a provider;

16 (b) Impose conditions on a provider's certification status;

17 (c) Suspend department referrals to the provider; or

18 (d) Require a provider to implement a plan of correction developed
19 by the department and to cooperate with subsequent monitoring of the
20 provider's progress. In the event a provider fails to implement the
21 plan of correction or fails to cooperate with subsequent monitoring,
22 the department may impose civil penalties of not more than one hundred
23 fifty dollars per day per violation. Each day during which the same or
24 similar action or inaction occurs constitutes a separate violation.

25 (3) When determining the appropriate enforcement action or actions
26 under subsection (2) of this section, the department must select
27 actions commensurate with the seriousness of the harm or threat of harm
28 to the persons being served by the provider. Further, the department
29 may take enforcement actions that are more severe for violations that
30 are uncorrected, repeated, pervasive, or which present a serious threat
31 of harm to the health, safety, or welfare of persons served by the
32 provider. The department shall by rule develop criteria for the
33 selection and implementation of enforcement actions authorized in
34 subsection (2) of this section. Rules adopted under this section shall
35 include a process for an informal review upon request by a provider.

36 (4) The provisions of chapter 34.05 RCW apply to enforcement
37 actions under this section. Except for the imposition of civil

1 penalties, the effective date of enforcement actions shall not be
2 delayed or suspended pending any hearing or informal review.

3 (5) The enforcement actions and penalties authorized in this
4 section are not exclusive or exhaustive and nothing in this section
5 prohibits the department from taking any other action authorized in
6 statute or rule or under the terms of a contract with the provider.

7 NEW SECTION. **Sec. 9.** The department shall develop and maintain
8 rules, guidelines, or policy manuals, as appropriate, for implementing
9 and maintaining the community protection program under this chapter.

10 **Sec. 10.** RCW 71.09.020 and 2003 c 216 s 2 and 2003 c 50 s 1 are
11 each reenacted and amended to read as follows:

12 Unless the context clearly requires otherwise, the definitions in
13 this section apply throughout this chapter.

14 (1) "Department" means the department of social and health
15 services.

16 (2) "Health care facility" means any hospital, hospice care center,
17 licensed or certified health care facility, health maintenance
18 organization regulated under chapter 48.46 RCW, federally qualified
19 health maintenance organization, federally approved renal dialysis
20 center or facility, or federally approved blood bank.

21 (3) "Health care practitioner" means an individual or firm licensed
22 or certified to engage actively in a regulated health profession.

23 (4) "Health care services" means those services provided by health
24 professionals licensed pursuant to RCW 18.120.020(4).

25 (5) "Health profession" means those licensed or regulated
26 professions set forth in RCW 18.120.020(4).

27 (6) "Less restrictive alternative" means court-ordered treatment in
28 a setting less restrictive than total confinement which satisfies the
29 conditions set forth in RCW 71.09.092. A less restrictive alternative
30 may not include placement in the community protection program as
31 pursuant to section 4 of this act.

32 (7) "Likely to engage in predatory acts of sexual violence if not
33 confined in a secure facility" means that the person more probably than
34 not will engage in such acts if released unconditionally from detention
35 on the sexually violent predator petition. Such likelihood must be

1 evidenced by a recent overt act if the person is not totally confined
2 at the time the petition is filed under RCW 71.09.030.

3 (8) "Mental abnormality" means a congenital or acquired condition
4 affecting the emotional or volitional capacity which predisposes the
5 person to the commission of criminal sexual acts in a degree
6 constituting such person a menace to the health and safety of others.

7 (9) "Predatory" means acts directed towards: (a) Strangers; (b)
8 individuals with whom a relationship has been established or promoted
9 for the primary purpose of victimization; or (c) persons of casual
10 acquaintance with whom no substantial personal relationship exists.

11 (10) "Recent overt act" means any act or threat that has either
12 caused harm of a sexually violent nature or creates a reasonable
13 apprehension of such harm in the mind of an objective person who knows
14 of the history and mental condition of the person engaging in the act.

15 (11) "Risk potential activity" or "risk potential facility" means
16 an activity or facility that provides a higher incidence of risk to the
17 public from persons conditionally released from the special commitment
18 center. Risk potential activities and facilities include: Public and
19 private schools, school bus stops, licensed day care and licensed
20 preschool facilities, public parks, publicly dedicated trails, sports
21 fields, playgrounds, recreational and community centers, churches,
22 synagogues, temples, mosques, public libraries, public and private
23 youth camps, and others identified by the department following the
24 hearings on a potential site required in RCW 71.09.315. For purposes
25 of this chapter, "school bus stops" does not include bus stops
26 established primarily for public transit.

27 (12) "Secretary" means the secretary of social and health services
28 or the secretary's designee.

29 (13) "Secure facility" means a residential facility for persons
30 civilly confined under the provisions of this chapter that includes
31 security measures sufficient to protect the community. Such facilities
32 include total confinement facilities, secure community transition
33 facilities, and any residence used as a court-ordered placement under
34 RCW 71.09.096.

35 (14) "Secure community transition facility" means a residential
36 facility for persons civilly committed and conditionally released to a
37 less restrictive alternative under this chapter. A secure community
38 transition facility has supervision and security, and either provides

1 or ensures the provision of sex offender treatment services. Secure
2 community transition facilities include but are not limited to the
3 facility established pursuant to RCW 71.09.250(1)(a)(i) and any
4 community-based facilities established under this chapter and operated
5 by the secretary or under contract with the secretary.

6 (15) "Sexually violent offense" means an act committed on, before,
7 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
8 rape in the first degree, rape in the second degree by forcible
9 compulsion, rape of a child in the first or second degree, statutory
10 rape in the first or second degree, indecent liberties by forcible
11 compulsion, indecent liberties against a child under age fourteen,
12 incest against a child under age fourteen, or child molestation in the
13 first or second degree; (b) a felony offense in effect at any time
14 prior to July 1, 1990, that is comparable to a sexually violent offense
15 as defined in (a) of this subsection, or any federal or out-of-state
16 conviction for a felony offense that under the laws of this state would
17 be a sexually violent offense as defined in this subsection; (c) an act
18 of murder in the first or second degree, assault in the first or second
19 degree, assault of a child in the first or second degree, kidnapping in
20 the first or second degree, burglary in the first degree, residential
21 burglary, or unlawful imprisonment, which act, either at the time of
22 sentencing for the offense or subsequently during civil commitment
23 proceedings pursuant to this chapter, has been determined beyond a
24 reasonable doubt to have been sexually motivated, as that term is
25 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
26 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
27 to commit one of the felonies designated in (a), (b), or (c) of this
28 subsection.

29 (16) "Sexually violent predator" means any person who has been
30 convicted of or charged with a crime of sexual violence and who suffers
31 from a mental abnormality or personality disorder which makes the
32 person likely to engage in predatory acts of sexual violence if not
33 confined in a secure facility.

34 (17) "Total confinement facility" means a secure facility that
35 provides supervision and sex offender treatment services in a total
36 confinement setting. Total confinement facilities include the special
37 commitment center and any similar facility designated as a total
38 confinement facility by the secretary.

1 **Sec. 11.** RCW 71.09.060 and 2001 c 286 s 7 are each amended to read
2 as follows:

3 (1) The court or jury shall determine whether, beyond a reasonable
4 doubt, the person is a sexually violent predator. In determining
5 whether or not the person would be likely to engage in predatory acts
6 of sexual violence if not confined in a secure facility, the fact
7 finder may consider only placement conditions and voluntary treatment
8 options that would exist for the person if unconditionally released
9 from detention on the sexually violent predator petition. The
10 community protection program under section 4 of this act may not be
11 considered as a placement condition or treatment option available to
12 the person if unconditionally released from detention on a sexually
13 violent predator petition. When the determination is made by a jury,
14 the verdict must be unanimous.

15 If, on the date that the petition is filed, the person was living
16 in the community after release from custody, the state must also prove
17 beyond a reasonable doubt that the person had committed a recent overt
18 act. If the state alleges that the prior sexually violent offense that
19 forms the basis for the petition for commitment was an act that was
20 sexually motivated as provided in RCW 71.09.020(~~(+6+)~~) (15)(c), the
21 state must prove beyond a reasonable doubt that the alleged sexually
22 violent act was sexually motivated as defined in RCW 9.94A.030.

23 If the court or jury determines that the person is a sexually
24 violent predator, the person shall be committed to the custody of the
25 department of social and health services for placement in a secure
26 facility operated by the department of social and health services for
27 control, care, and treatment until such time as: (a) The person's
28 condition has so changed that the person no longer meets the definition
29 of a sexually violent predator; or (b) conditional release to a less
30 restrictive alternative as set forth in RCW 71.09.092 is in the best
31 interest of the person and conditions can be imposed that would
32 adequately protect the community.

33 If the court or unanimous jury decides that the state has not met
34 its burden of proving that the person is a sexually violent predator,
35 the court shall direct the person's release.

36 If the jury is unable to reach a unanimous verdict, the court shall
37 declare a mistrial and set a retrial within forty-five days of the date
38 of the mistrial unless the prosecuting agency earlier moves to dismiss

1 the petition. The retrial may be continued upon the request of either
2 party accompanied by a showing of good cause, or by the court on its
3 own motion in the due administration of justice provided that the
4 respondent will not be substantially prejudiced. In no event may the
5 person be released from confinement prior to retrial or dismissal of
6 the case.

7 (2) If the person charged with a sexually violent offense has been
8 found incompetent to stand trial, and is about to or has been released
9 pursuant to RCW 10.77.090(4), and his or her commitment is sought
10 pursuant to subsection (1) of this section, the court shall first hear
11 evidence and determine whether the person did commit the act or acts
12 charged if the court did not enter a finding prior to dismissal under
13 RCW 10.77.090(4) that the person committed the act or acts charged.
14 The hearing on this issue must comply with all the procedures specified
15 in this section. In addition, the rules of evidence applicable in
16 criminal cases shall apply, and all constitutional rights available to
17 defendants at criminal trials, other than the right not to be tried
18 while incompetent, shall apply. After hearing evidence on this issue,
19 the court shall make specific findings on whether the person did commit
20 the act or acts charged, the extent to which the person's incompetence
21 or developmental disability affected the outcome of the hearing,
22 including its effect on the person's ability to consult with and assist
23 counsel and to testify on his or her own behalf, the extent to which
24 the evidence could be reconstructed without the assistance of the
25 person, and the strength of the prosecution's case. If, after the
26 conclusion of the hearing on this issue, the court finds, beyond a
27 reasonable doubt, that the person did commit the act or acts charged,
28 it shall enter a final order, appealable by the person, on that issue,
29 and may proceed to consider whether the person should be committed
30 pursuant to this section.

31 (3) The state shall comply with RCW 10.77.220 while confining the
32 person pursuant to this chapter, except that during all court
33 proceedings the person shall be detained in a secure facility. The
34 department shall not place the person, even temporarily, in a facility
35 on the grounds of any state mental facility or regional habilitation
36 center because these institutions are insufficiently secure for this
37 population.

1 (4) A court has jurisdiction to order a less restrictive
2 alternative placement only after a hearing ordered pursuant to RCW
3 71.09.090 following initial commitment under this section and in accord
4 with the provisions of this chapter.

5 NEW SECTION. **Sec. 12.** Sections 2 through 9 of this act are each
6 added to chapter 71A.12 RCW."

7 Correct the title.

EFFECT: Prohibits the availability of the Community Protection Program to be considered as a placement condition or treatment option available to a person if unconditionally released from detention on a sexually violent predator petition or as a less restrictive alternative for release.

Removes the requirement that consideration be given to the safety and welfare of both the individual and the community when considering lessening Community Protection Program restrictions, reducing supervision, or terminating services.

Permits DSHS to impose sanctions for listed violations against the provider of any developmental disabilities residential services and support.

DSHS may impose fines against a provider only if DSHS has required a corrective action plan and the provider fails to comply with the plan or cooperate with monitoring.

The provider may request an informal review of the DSHS sanctions.

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